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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20555

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re:

New Form Permitting Cable Systems
Subject to Price Cap Regulation
To Recover Certain Costs of
Significant Network Upgrades

)
)
) FCC Form 1235
) MM Dkt. No. 93-215
)
)

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COMMENTS OF THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY

The Southern New England Telephone Company ("SNET"), which provides telephone service throughout Connecticut, submits these comments on the draft form (FCC Form 1235) developed by FCC staff to carry out a Commission order in Docket No. 93-215. In that order, the Commission created a narrow exception to its policy barring cable operators subject to benchmark/price cap regulation from increasing the price of regulated cable service based on increased capital costs. The exception allows a cable operator who makes a new capital investment to increase price based on increased costs if it demonstrates, among other things, that the new investment is "significant" and is used to "improve[] . . . regulated [cable TV] services. . . ."^{1/} The Commission instructed its staff to develop the form cable operators must use to make this showing.^{2/}

^{1/} Implementation of Sections of the Cable Television Consumer Protection in Competition Act of 1992; Rate Regulation, 9 FCC Rcd. 4527, 4675 (1994).

^{2/} Id., 9 FCC Rcd. at 4676.

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The Commission has sought comments on the proposed form developed by its staff because the Paperwork Reduction Act of 1995 mandates Commission review before the form becomes effective.^{3/} That Act requires the Commission to request public comments on each proposed form and to make any modification necessary to ensure "proper performance of the functions of the agency" or "to enhance the quality, utility and clarity" of the form.^{4/}

The Paperwork Reduction Act requires that the Commission revise the subject form in the ways described below. Each revision is discussed in turn.

DISCUSSION

- I. Instructions for Completing Lines 1 and 2 of the Form Should Be Revised In Order to Comply with the Commission's Directive that the Form Be Used Only When the New Investment Is "Significant" and Will "Improve . . . [Regulated] Cable Service

The Commission should revise the proposed instructions for completing Lines 1 and 2 of Part 1, Section A of the form to ensure that those instructions promote "proper performance of the [FCC's] functions" as the Paperwork Reduction Act requires. In order to protect cable ratepayers from paying "higher rates to fund upgrades that benefit other services," the Commission held that the subject form could be used to justify a price hike based on a new investment only if the investment is both "significant" and "improve[s] . . . regulated [cable TV] services". However, the proposed

^{3/} Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995).

^{4/} Id. at Sec. 2, amending 44 U.S.C. § 3506(c).

instructions do not require that cable operators meet these two criteria in order to use the form. First, by giving cable operators a right to use the form for a new investment that is not significant but results in improved regulated cable service (as contemplated in the instructions for Line 2), the instructions plainly violate the mandate that the form be used only for investments that are "significant".

Nor can the Commission determine from information supplied by the cable operator on the form whether its investment is "significant" because the definition of a "significant" investment provided by the instructions is irrational. The instructions for Line 1 of the form define a "significant" investment as any investment in any cable system having a substantial amount of fiber and at least 550 MHz of bandwidth after the investment is completed. By defining an investment as "significant" based on the cable system's attributes after the investment is made rather than based on the nature of the investment itself, many cable systems would be eligible to use this form to justify rate hikes based on insubstantial investments. This is because numerous cable systems already have a bandwidth of 550 MHz and a significant amount of fiber even before making any new investment. For example, Cablevision, whose cable network passes the homes of about 600,000 people in Connecticut, has informed the Commission that each of its Connecticut cable systems already provides "at least 86 channels of capacity."^{5/} A cable

^{5/} See "Pet. to Deny of Cablevision Systems Corp. and The New Eng. Cable Telev. Ass'n, Inc." at 26 n.75 (File No. W-P-C 6858, filed Sept. 26, 1985).

system providing this many channels already has at least 550 MHz of bandwidth. Cablevision also has portrayed its existing network as meeting the requirement to have substantial fiber content by characterizing that network as a "hybrid fiber-coaxial broadband" network.^{6/}

Rather than considering an investment "significant" merely because the cable operator's network has a high fiber content and at least 550 MHz of bandwidth, the instructions for Line 1 instead should define an investment as significant if the investment substantially increases total bandwidth in service (e.g., by at least 25 percent) immediately upon completion of the investment. Defining "significant" investment in this way would help promote the Commission's objective to ensure that the subject form is used to justify cable rate increases based on new investment only where that investment adds substantially to the video transmission capacity of the subject cable system.

Not only would the proposed instructions unlawfully permit use of the form to justify rate hikes based on insignificant investments, they also would permit use of the form to justify rate hikes based on investments undertaken to provide services other than regulated cable service in violation of the directive that the form be used only if the investment "improve[s]. . . regulated [cable] services. . . ." (emphasis added). Rather than require all users

^{6/} See "Applic. of Cablevision lightpath-CT, Inc. for Certif. of Pub. Convenience and Necessity to Provide Services Within the State of Conn." at 4 (Conn. Dept. of Pub. Util Control, filed July 27, 1995).

of the form to show improvements in regulated cable service as a result of the new investment as the Commission required, the proposed instructions for Line 2 of the form mandate this showing only from those making insignificant investments on the theory that investments by all other cable systems automatically improve regulated cable service. But Cablevision's plans for Connecticut show that this assumption is false. While Cablevision has announced that it is in the process of investing \$243 million in its Connecticut infrastructure, it also has indicated that it is making this investment to provide unregulated cable service and non-cable services rather than to improve regulated cable service. Thus, the company has stated that the new investment will allow it to add a host of new unregulated cable services, including (1) more than 35 new pay-per-view channels; (2) numerous new a-la-carte channel offerings; (3) a new video-on-demand service allowing instant access to a library of hundreds of movies along with the ability to pause, fast-forward and rewind the selected programming; and (4) a new interactive video home shopping service and various interactive video games.^{7/} Cablevision also has stated that this new investment will permit it to provide non-cable TV services, including (1) a consumer service providing access to Internet and commercial computer on-line services at a speed 50 times faster than is possible by using a regular phone line;^{8/} (2) a common

^{7/} See "Reply of The So. New Eng. Tel. Co. to Oppositions to SNET's Applic. to Amend Authorization to Conduct a One-Year Long video Trial" at Exh. 3 (File No. W-P-C 6858, filed Oct. 6, 1995).

^{8/} Id.

carrier video transport service for video programmers allowing such programmers to lease channel capacity of two different bandwidths in order to transmit video programming between selected points;^{9/} and (3) regular local exchange telephone service for both residential and business customers.^{10/} Thus, the form as presently drafted allows cable operators to circumvent the Commission's policies and unfairly causes regulated cable ratepayers to subsidize the operators' investments in telephony and unregulated services.

Instructions for completing the form should be revised to comply with the Commission's mandate that the form be used only by those who propose a substantial increase in existing bandwidth in order to improve regulated cable TV service. This can be done by modifying the draft instructions for completing Lines 1 and 2 of Part 1, Section A of the form. The draft instructions for these lines are reprinted below. Suggested additions are underlined, and suggested deletions are marked through:

"Line 1. Check whether upgrade meets either of the following Minimum Technical Specifications: (1) an increase of at least 550 MHz ~~capacity with upgrade capability to 750 MHz, fiber to the node or beyond, and no~~

^{9/} See "Applic. of Cablevision Lightpath-CT," supra, Exh. E at 65.

^{10/} Id. at 4. TCI, Cox, and Comcast, three cable companies whose networks pass a combined total of more than 650,000 Connecticut households (more than 1.5 million people), have indicated that they too plan to invest heavily in their existing networks. But like Cablevision, they are making this investment so that they can use their networks to provide telephone service and unregulated cable service rather than to improve regulated cable service. See "Applic. of New Telco, L.P. for Issuance of a Cert. of Pub. Convenience and Necessity to Offer Competitive Local Exchange Service in Conn.", Exh. 6 at 7 (Dept. of Pub. Util. Control, Dkt. No. 95-08-36, filed Aug. 30, 1995).

~~more than 1,500 homes per node; 25 percent in the amount of immediately usable bandwidth; or (2) for systems that meet the definition of 'small system' under the Commission's rules, at least 550 MHz, fiber to the node or beyond, and no more than 3,000 homes per node. If "no" (no) is marked, proceed to Line 3; the upgrade will be deemed 'significant' and a benefit to subscribers of regulated services. you are not eligible to use this form in order to justify a rate increase.~~

"Line 2. ~~If line 1 is marked 'no',~~ Attach a brief description of the upgrade and explain how the upgrade will benefit subscribers to BST and CPSTs. For instance, such a description should include, if applicable, the number and percentage of channels that will be added to the various regulated service tiers, the level of improvement in picture quality and/or reliability, or new regulated services that will be available to subscribers as a result of the upgrade."^{11/}

- II. In Order to Comply with the Commission's Directive that the Form Request Needed Information Clearly, Instructions for Completing Column (b) of Worksheet B Should Be Revised to State that the Cable Operator Must Use the Same Methodology to Allocate Costs Between Video and Telephony as a Local Exchange Carrier Is Required to Use for This Purpose

The Commission also should revise the instructions for completing column (b) of Worksheet B in order to "enhance the quality, utility, and clarity of the information" the form requests. That instruction requires that cable operators completing the form "describe each allocation methodology used to allocate . . . investments and . . . changes in expenses" between service categories, but the instruction is needlessly ambiguous because it pro-

^{11/} Revising the instructions for completing Lines 1 and 2 in the manner indicated above requires that Line 2 of the form itself be changed too. Line 2 of the form is reprinted below. Proposed additions are underlined:

"If 'No' was unanswered in questions 1, you are not eligible to use this form. If 'Yes' was answered in question 1, attach a brief description of how subscribers to Basic and Cable Programming Service Tiers will benefit from the capital improvements."

vides no guidance about what allocation methodology is acceptable. The Commission should add language to this instruction making clear that it will require cable operators to allocate their costs between cable TV and telephony using the same methodology the agency requires local exchange carriers to use in allocating their costs between cable TV and telephony since it would be irrational to permit use of a different methodology. In each situation a transmission network is used to provide both multi-channel video service and telephony, and in each situation the Commission's objective in regulating the way costs are allocated between video and telephony is to ensure that customers of both video and telephony services bear a reasonable share of the costs. Therefore, in order to protect cable ratepayers and ensure regulatory parity for all competitors, the cost allocation methodology used in this form should be in accord with what a LEC must use if it uses its network to provide both telephony and cable TV service.^{12/}

^{12/} The Commission also should revise page 1 of the instructions to ensure that the form promotes "proper performance of the [FCC's] functions" That page allows cable operators to use the form to justify a rate hike for any investment placed in service before March 30, 1994. The March cutoff date should be replaced with the date "May 15, 1994" to ensure that the form promotes "proper performance of the [FCC's] functions" since the Commission already has held that cable operators cannot obtain a rate increase for new investments unless the investment was put in service on or after that date. See 9 FCC Rcd. at 4697 (stating that all policies adopted in the subject order, including the policy allowing use of the form at issue here, are effective May 15, 1995).

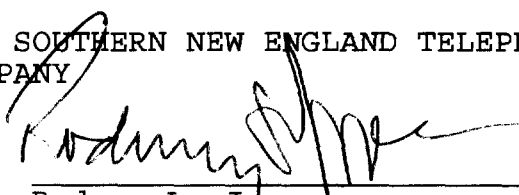
CONCLUSION

The Commission should revise the instructions that will accompany the cable system upgrade form in the respects described above.

Respectfully submitted,

THE SOUTHERN NEW ENGLAND TELEPHONE
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing "Comments of The Southern New England Telephone Company" was delivered today, November 22, 1995, by hand to each of the following:


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